

BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Stephen F. Ludwig, et al.,
Petitioners,
v.
San Juan County,
Respondent.

CASE NO. 05-2-0019c
COMPLIANCE ORDER
(EASTSOUND UGA-JUNE 2006)

Fred R. Klein,
Petitioner,
v.
San Juan County,
Respondent.

CASE NO. 02-2-0008
COMPLIANCE ORDER
(EASTSOUND UGA-JUNE 2006)

John M. Campbell, et al.,
Petitioner,
v.
San Juan County,
Respondent.

CASE NO. 05-2-0022c
FINAL DECISION AND ORDER

I. SYNOPSIS

This matter comes to the Board as a result of the Board's October 15, 2002, Final Decision /Compliance Order in these cases and the petitions filed by Fred Klein and John Campbell in Case No. 05-2-0022c.

1 In a commendable effort to reduce sprawl and provide for affordable housing, the County
2 has designated the Eastsound Urban Growth Area (UGA) on Orcas Island, as well as
3 another UGA on Lopez Island. Creating a non-municipal UGA is a major undertaking,
4 particularly where the local government must rely upon private providers to extend urban
5 levels of sewer and water to the new UGA. San Juan County has been making steady
6 progress towards achieving a compliant UGA at Eastsound, relying upon the Eastsound
7 Sewer and Water District (ESSWD) to provide urban levels of service to the Eastsound
8 UGA. The ESSWD plan now includes an inventory of existing facilities and locations and
9 capacities of some future facilities. The storm drainage plan includes a good discussion of
10 storm drainage problems and projects to address those problems with cost estimates.
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13 The County has also reduced the size of the UGA by excluding properties where covenants
14 precluded future urban densities. In addition, it includes an affordable housing bonus in its
15 regulations for low and moderate income housing in certain portions of the UGA.
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18 The October 15, 2002 decision found the designation of the Eastsound UGA did not comply
19 with the Growth Management Act (GMA) because it lacked a compliant capital facilities
20 plan, the urban growth boundaries were not justified by the land capacity analysis and
21 population projections (including the market factor used by the County), and some lands
22 included in the UGA did not meet the requirements for inclusion in a UGA. Despite the
23 good work done to date, the County has additional work to do to achieve compliance. A
24 major deficiency in the County's remand work is the absence of a capital facilities plan
25 showing the capacity and locations of sewer facilities to serve the entire UGA in the 20-year
26 planning period; a six year financing plan that shows funding capacities and sources of
27 public money, and how future facilities will be extended throughout the UGA during the 20-
28 year planning period. To make the ESSWD plan part of the County's capital facilities
29 element, the County must also incorporate compliant capital facilities information from the
30 ESSWD plan that the County wishes to utilize for the Eastsound UGA into the County's
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1 comprehensive plan's capital facilities' element itself. Without such information, the
2 County's record fails to show that urban densities can be achieved and sewer provided
3 throughout the UGA over the 20-year planning period as required by RCW 36.70A.070(3)(a)
4 – (d), RCW 36.70A.020 (12), and RCW 36.70A.110 (1) and (3).
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7 Another source of major concern is sizing of the UGA. The County has not shown its work
8 or analysis with regard to the need for commercial and institutional growth in the Eastsound
9 UGA in the next 20 years, including an analysis of the impact of commercial and institutional
10 needs on the land supply for residential housing . RCW 36.70A.110 (2) and RCW 36.70A.
11 115.
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14 With regard to whether some of the property included in the Eastsound UGA is
15 “characterized by urban growth or adjacent to areas of urban growth”, the recent *Quadrant*¹
16 decision (issued since the October 15, 2002, Compliance Order/Final Decision and Order in
17 this case) has given this Board additional guidance on the existing residential densities that
18 may qualify for inclusion in the UGA under RCW 36.70A.110(1). Under the *Quadrant*
19 decision, land that is already developed at suburban densities may be considered as being
20 “characterized by urban growth” for purposes of inclusion in a UGA. Therefore, we find that
21 the inclusion of the westernmost properties in the Eastsound UGA does not violate the
22 requirement that lands within a UGA be “characterized by urban growth”. RCW
23 36.70A.110(1). However, those lands may still not be designated as part of a UGA until a
24 compliant capital facilities plan demonstrates that urban services can be provided to those
25 areas within the planning period. RCW 36.70A.110(3) and RCW 36.70A.020(12). Further,
26 once included in the UGA, those lands must be zoned for appropriate urban densities so
27 that landowners may pursue more intensive development in the future, if they wish. See
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¹ *Quadrant v. Central Puget Sound Growth Management Hearings Board*, 154 Wn.2d 224,110 P.3d 1132(2005)

1 RCW 36.70A.110(2). The County's current plan for the Eastsound UGA does not meet
2 these requirements.

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4 With regard to whether Petitioner Klein's property should be included in the UGA, the Board
5 determines that it does not have a basis to order the inclusion of his property into the UGA
6 under the circumstances presented here. This is a matter of County discretion. If, on
7 remand, the County determines that more commercial and institutional land must be
8 provided within the UGA or if the County decides to exclude properties from the UGA
9 because they can not be served with urban levels of service during the 20-year planning
10 period, the County may wish to consider the inclusion of the Klein property into the
11 Eastsound UGA. However, cities and counties have discretion to make many choices about
12 accommodating growth as long as those choices comply with the GMA, and the decision to
13 include or exclude the Klein property is ultimately a decision for the County Council.
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17 Petitioner Campbell challenges the provisions for affordable housing in the Eastsound UGA.
18 Since the housing element of the County's comprehensive plan has already been found
19 compliant, the question is whether the County has considered the GMA housing goal in its
20 planning for the Eastsound UGA. RCW 36.70A.020(4). From the record, it is clear that the
21 County concerned itself directly with the issue of affordable housing in the Eastsound UGA.
22 San Juan County added a density bonus program for low and moderate income housing in
23 low density areas in the development regulations adopted to implement the Eastsound
24 UGA. The County has exercised its discretion in choosing the techniques to address the
25 affordable housing goal, and in so doing, complied with the affordable housing goal of the
26 GMA. RCW 36.70A.020(4).
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30 Finally, the Board declines to grant Petitioner Klein's request for invalidity. While four years
31 is a long time to achieve compliance, the designation of the Eastsound UGA is a task of
32 unusual scope and complexity for a rural County with limited resources. As long as the

1 County keeps Ordinance 3-2004 in place until the Eastsound UGA is found compliant so
2 that urban uses are not allowed until compliance is found, we find that the designation of the
3 Eastsound UGA does not interfere with Goals 1,2, and 4 of the GMA.
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5 6 **II. PROCEDURAL HISTORY**

7 See Appendix A.

8 **III. BURDEN OF PROOF**

9 For purposes of board review of the comprehensive plans and development regulations
10 adopted by local government, the GMA establishes three major precepts: a presumption of
11 validity; a "clearly erroneous" standard of review; and a requirement of deference to the
12 decisions of local government.
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14 Pursuant to RCW 36.70A.320(1), comprehensive plans, development regulations and
15 amendments to them are presumed valid upon adoption:
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17 Except as provided in subsection (5) of this section, comprehensive plans and
18 development regulations, and amendments thereto, adopted under this chapter are
19 presumed valid upon adoption.

20 RCW 36.70A.320(1).

21 The statute further provides that the standard of review shall be whether the challenged
22 enactments are clearly erroneous:
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24 The board shall find compliance unless it determines that the action by the state
25 agency, county, or city is clearly erroneous in view of the entire record before the
26 board and in light of the goals and requirements of this chapter.

27 RCW 36.70A.320(3).

28 In order to find the County's action clearly erroneous, the Board must be "left with the firm
29 and definite conviction that a mistake has been made." *Department of Ecology v. PUD1*,
30 121 Wn.2d 179, 201, 849 P.2d 646 (1993).
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1 Within the framework of state goals and requirements, the boards must grant deference to
2 local government in how they plan for growth:

3 In recognition of the broad range of discretion that may be exercised by counties and
4 cities in how they plan for growth, consistent with the requirements and goals of this
5 chapter, the legislature intends for the boards to grant deference to the counties and
6 cities in how they plan for growth, consistent with the requirements and goals of this
7 chapter. Local comprehensive plans and development regulations require counties and
8 cities to balance priorities and options for action in full consideration of local
9 circumstances. The legislature finds that while this chapter requires local planning to
10 take place within a framework of state goals and requirements, the ultimate burden and
11 responsibility for planning, harmonizing the planning goals of this chapter, and
12 implementing a county's or city's future rests with that community.

13 RCW 36.70A.3201 (in part).

14 In sum, the burden is on the Petitioner to overcome the presumption of validity and
15 demonstrate that any action taken by the County is clearly erroneous in light of the goals
16 and requirements of Ch. 36.70A RCW (the Growth Management Act). RCW 36.70A.320(2).
17 Where not clearly erroneous and thus within the framework of state goals and requirements,
18 the planning choices of local government must be granted deference.

19 IV. ISSUES PRESENTED

20 Compliance Issues from *Michael Durland, et al., v. San Juan County*, Case No. 00-2-
21 0062c ²and *Fred Klein v. San Juan County*, Case No. 02-2-0008, Compliance Order
22 (October 15, 2002):
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- 25 1. ***Complete an Eastsound UGA capital facilities analysis with respect to***
26 ***wastewater and drainage services that complies with the GMA.***
- 27 2. ***Reconsider the Eastsound market factor.***
- 28 3. ***Reconsider the inclusion of the westernmost, low-density properties in the***
29 ***Eastsound UGA and establish appropriate urban densities for a non-municipal UGA***
30 ***that comply with the GMA.***

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32 ² This case was consolidated with *Stephen F. Ludwig et al., v. San Juan County*, Case No. 05-2-0019c on October 21,
2005 and recaptioned with that case name and number on October 21, 2005.

1 Issues in *John Campbell et al., v. San Juan County*, Case No. 05-2-0022c:

- 2 1. Does the new Eastsound UGA boundary and accompanying development
3 regulations make adequate provision for affordable housing in the UGA?
4 (*Campbell Petition*, Case No. 05-2-0021).
- 5 2. Has the County completed an Eastsound UGA capital facilities plan with
6 respect to wastewater and drainage services and performed an analysis as a
7 basis for drawing the urban growth area (UGA) boundaries pursuant to RCW
8 36.70A.070(3) and RCW 36.70A.110(3)? (*Klein Petition*, Case No. 05-2-0022).
- 9 3. Did the County fail to include sufficient land within the Eastsound UGA to
10 accommodate projected growth pursuant to RCW 36.70A.110(2)? (*Klein*
11 *Petition*, Case No. 05-2-0022).
- 12 4. Did San Juan County comply with the requirements of the Growth
13 Management Act, including RCW 36.70A.110(1) and (3) as to the boundaries
14 and sizing of the Eastsound UGA? (*Klein Petition*, Case No. 05-2-0022)
- 15 5. Did San Juan County's exclusion of Petitioner's property from the Eastsound
16 UGA under Ordinance 13-2005 comply with RCW 36.70A.110, RCW 36.70A.115,
17 RCW 36.70A.030(18), and RCW 36.70A.020(1), (2), and (4)? (*Klein Petition*,
18 Case No. 05-2-0022).
- 19 6. Do any of the above actions substantially interfere with the goals of the Act,
20 particularly RCW 36.70A.020(1) and (4)? (*Klein Petition*, Case No. 05-2-0022).

21 V. DISCUSSION OF THE ISSUES

22 A. Capital Facilities Planning Issues

23 *Compliance Issue 1: Complete an Eastsound UGA capital facilities analysis with*
24 *respect to wastewater and drainage services that complies with the GMA.*
25 *(Compliance issue)*

26 *Klein Issue 2: Has the County completed an Eastsound UGA capital facilities plan*
27 *with respect to wastewater and drainage services and performed an analysis as a*
28 *basis for drawing the urban growth area (UGA) boundaries pursuant to RCW*
29 *36.70A.070(3) and RCW 36.70A.110(3)? (Klein Petition, Case No. 05-2-0022). (Issue*
30 *from Klein petition)*

1 Positions of the Parties

2 **Petitioner's Position**

3 Petitioner Klein asserts that the capital facilities plan prepared by the Eastsound Sewer and
4 Water District (ESSWD, District) was based on the 2000 UGA boundaries which now shows
5 sewer lines running outside of the current UGA boundaries. He also claims that the
6 ESSWD General Sewer Plan has not been adopted by the ESSWD Board. Petitioner's
7 Brief regarding Ordinance No 13-2005 and in Opposition to San Juan County's Report of
8 Actions Taken (November 29, 2005)(Petitioner's Brief) at 5. Petitioner further argues that
9 the County has failed to comply with the October 15, 2002, Compliance Order/Final
10 Decision and Order directing the County to analyze the Eastsound UGA's boundaries in
11 light of the capacity for sewer and drainage facilities within the UGA. Petitioner's Brief at 6.
12 Petitioner points to a letter from Washington Department of Community, Trade, and
13 Economic Development (CTED), reminding the County that the final record should indicate
14 how the capital facilities analysis was used as a basis for drawing the final boundaries
15 consistent with the criteria for designating UGA boundaries in RCW 36.70A.110.
16 Petitioner's Brief at 6. Petitioner says evidence in the record shows that the County did not
17 use its capital facilities analysis as a basis for drawing the Eastsound UGA boundaries
18 because the evidence shows areas not served by sewer included within the UGA, and
19 areas served by sewer not included in the UGA. Petitioner's Brief at 7.

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Petitioner also contends that the County has not adopted long-range Eastsound UGA
drainage plans. Petitioner's Brief at 8.

26 **County's Position**

28 The County states that the Eastsound Technical Report contains a summary of the County's
29 sewer/wastewater planning efforts. The County declares that the ESSWD General Sewer
30 Plan contains a detailed inventory and analysis of its sewer/ wastewater system including an
31 inventory of capital facilities owned by the District, a forecast of future needs, locations for
32 new and expanded facilities, cost projections, and funding sources. The District's General

1 Sewer Plan, the County asserts, contains a map showing sewer and unsewered areas.
2 Respondent's Prehearing Brief at 5.

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4 Board Discussion

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6 The October 15, 2002, Compliance Order found that the Eastsound UGA capital facilities
7 analysis failed to comply with the GMA and ordered the County to complete its capital
8 facilities analysis with respect to wastewater and drainage services. Conclusion of Law E
9 and Order, Compliance Order at 2. Specifically, the Board held that the wastewater plan
10 lacked an inventory of existing facilities, a projection of future needs, and a financing plan.
11 Compliance Order (October 15, 2002) at 10, 11, and 21. Likewise, the Board found the
12 drainage plan lacked a financing plan. Compliance Order at 11 and 19. Petitioner Klein
13 argues that the capital facilities plans continue to lack these elements and the County did
14 not consider the wastewater management plan, especially wastewater conveyance facilities,
15 when it drew its urban growth boundaries.

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18 RCW 36.70A.070(3) delineates the requirements for a capital facilities plan. The County
19 provides the ESSWD General Sewer Plan (sewer plan) as evidence that the required
20 components of a capital facilities plan are in place for the Eastsound UGA.³ This sewer
21 plan includes an inventory of existing facilities, showing locations and capacities of trunk
22 lines and *existing* neighborhood collectors. The sewer plan also includes a forecast of future
23 needs for wastewater treatment and trunk collector lines that will serve future UGA growth.
24 Exhibit 4 at 10, 11, and Figure 3.⁴ While the plan includes cost estimates for some future
25 facilities, and shows how *existing* facilities are financed, it still does not include a six-year
26 financing plan for *future* facilities. Exhibit 4 at 21 and 22. Additionally, the sewer plan does
27 not specify when, where, and how future neighborhood collection facilities will be provided
28 during the 20-year planning period in those parts of the urban growth area that have been
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32 ³ The sewer plan was completed in 2003 before the County designated the 2005 UGA.

⁴ At the time the plan was completed, it was written in light of the 2000 UGA boundaries which have been altered to achieve compliance here.

1 designated for densities of one or two dwelling units per acre, as well as in some designated
2 Industrial Areas.⁵ These deficiencies in the capital facilities sewer plan fail to comply with
3 RCW 36.70A.070(3)(b),(c),and (d). Exhibit 4 at Figure 3, 10, and 22.
4

5 As a result of the deficiencies in the capital facilities plan, the UGA boundaries are not yet
6 compliant. Urban service levels must be planned for the entire non-municipal UGA during
7 the 20-year planning period in order to meet GMA requirements. See *ICAN v. Jefferson*
8 *County*, WWGMHB Case No. 03-2-0010c and 04-2-0022 (Compliance Order/Final Decision
9 and Order, May 31, 2005). While the sewer plan provides a “good analysis of the potential
10 future conveyance system improvements needed when flows reach certain levels”, it does
11 not provide planning information necessary to show that sewer service can feasibly be
12 extended to all portions of the Eastsound UGA over the course of the 20-year planning
13 period. We therefore find that the General Sewer Plan is not a sufficient basis for drawing
14 compliant final boundaries for the Eastsound UGA. Exhibit 2 at 12.
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17 Also, the 2003 ESSWD General Plan shows sewer lines running outside the current UGA to
18 serve areas that now are outside the 2005 UGA⁶. Extending sewer service outside of a
19 UGA is not compliant with the GMA, unless the lines were established before the passage
20 of the GMA or to correct a documented health hazard. RCW 36.70A.110(4). If the County is
21 going to use the ESSWD’s General Plan to support its designation of the Eastsound UGA, it
22 needs capital facilities information that is consistent with its comprehensive plan. This also
23 means that the map of the Eastsound UGA found in the County’s land use map is not
24 consistent with the map for the Eastsound UGA in the ESSWD General Sewer Plan. The
25 County and ESSWD need to work together to make their plans coordinated and consistent.
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28 As to the storm drainage plan, our examination shows that the plan contains a thorough
29 analysis of the Eastsound UGA drainage problems and a good discussion of projects
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31 ⁵ See *Cotton v. Jefferson County*, WW GMHB Case No. 98-2-0017 (Amended Final Decision and Order, April
32 4, 1999) and *Hensley V*, CPSGMHB Case No. 96-3-0031(Final Decision and Order, February 25, 1997).

⁶ They were part of the 2000 UGA designation.

1 needed to address these problems. Even so, it also does not contain a financing plan that
2 identifies sources of funding for needed improvements. Exhibit 5 at 66. To assist with
3 financing its storm drainage needs, the County has taken the difficult, but critical step of
4 adopting a storm drainage utility. Ordinance 14-2005 shows that a mechanism to finance
5 storm drainage projects has been established. Exhibit 6. However, the drainage plan does
6 not show the extent that the storm drainage utility will support local projects and whether
7 other sources of funding will be needed, as required by RCW 36.70A.070(3)(d). Also,
8 because the storm drainage plan does not show how facilities will be provided in the 20-
9 year planning period, it is clearly erroneous and does not comply with RCW 36.70A.020(12)
10 and RCW 36.70A.110(3).
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13 Petitioner Klein states that the County has not adopted either the sewer plan or the drainage
14 plan of ESSWD. The Board can find no evidence in the record showing that either of these
15 plans have been adopted. Unless these plans are adopted (as a whole or in relevant part)
16 and a County commitment made to pursuing them, they provide no actual planning support
17 for the Eastsound UGA. See Final Decision and Order/Compliance Order, WWGMHB Case
18 No. 05-2-0019c (April 19, 2006).
19

20 Additionally, to achieve compliance with the urban services goals and requirements of the
21 GMA, Ordinance 3-2004 must be kept in place so that urban levels of development are not
22 permitted until there is evidence that urban levels of service will be available to support it.
23 This is necessary to prevent sprawl in accordance with RCW 36.70A.020 (2) and to ensure
24 that development in these areas will eventually be served by urban services, in accordance
25 with RCW 36.70A.020(12). While the County requires platting to urban densities in those
26 areas of the UGA where sewers are not currently extended, it does not require that such
27 development be required to connect to sewers when they become available. Exhibit 1,
28 Attachment A. Lack of this requirement could be a deterrent to financing future facilities.
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31 Conclusion: The County's capital facilities plan for sewer and storm drainage facilities for
32 the Eastsound UGA is not compliant with RCW 36.70A.070 (3)(a) – (d). First, the plans of

1 the ESSWD, if they form the basis upon which the County plans to provide urban services to
2 the new UGA, must be incorporated into the County's comprehensive plan. Further, for the
3 ESSWD plan to provide compliant support for the Eastsound UGA it must: (1) include
4 locations and capacities of all future facilities needed to serve the Eastsound UGA for the
5 20-year planning period. RCW 36.70A.070(3)(b) and (c), and RCW 36.70A.020(12); (2) be
6 consistent with the Eastsound UGA land use map pursuant to RCW 36.70A.070(preamble),
7 and (3) show how needed facilities will be funded for at least six years, to comply with RCW
8 36.70A.070(3)(d), and (4) show how facilities will be provided over the 20-year planning
9 period to comply with RCW 36.70A.110(3) and RCW 36.70A.020(12). Likewise, the
10 County's capital facilities element for storm drainage facilities does not comply with RCW
11 36.70A.070 (a)–(d) until it is incorporated into the County's comprehensive plan and
12 contains a six-year financing plan that identifies funding capacities and sources of public
13 funding. Additionally, the storm drainage plan needs to show how storm drainage facilities
14 will be provided over the 20-year planning period to comply with RCW 36.70A.110(3) and
15 RCW 36.70A.020(12).
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19 Finally, to prevent sprawl, the County needs to keep the interim limitation on residential
20 densities imposed in Ordinance 3-2004 in place until the Eastsound UGA is found
21 compliant.
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23 **B. Sizing of the UGA and Urban Densities Within the UGA**

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25 The inclusion of land within a non-municipal UGA must meet three basic criteria. These
26 criteria are derived from RCW 36.70A.110, RCW 36.70A.115, and RCW 36.70A.020(1), (2),
27 and (12). The criteria for the inclusion of land in the non-municipal UGA are (1) it must be
28 needed to accommodate projected urban population growth and needed urban uses (RCW
29 36.70A.110(2), RCW 36.70A.115); (2) it must be land "characterized by urban growth or
30 adjacent to land characterized by urban growth" (RCW 36.70A.110(1), RCW 36.70A. 020(1)
31 and (3) it must be property for which urban services are planned and feasible within the 20-
32 year planning horizon (RCW 36.70A.110(3), RCW 36.70A.020(12). Petitioner challenges

1 the UGA boundaries on all three grounds. We will address them in turn. In addition, land
2 contained within a UGA must be zoned for future urban densities and uses. RCW
3 36.70A.110(2).

4 **1. Sufficiency of Land in the UGA**

5 ***Klein Issue 2: Did the County fail to include sufficient land within the***
6 ***Eastsound UGA to accommodate projected growth pursuant to RCW***
7 ***36.70A.110(2)? (Klein Petition, Case No. 05-2-0022).***
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9 Positions of the Parties

10 **Petitioner's Opening Argument**

11 Petitioner Klein disagrees with the County's assumption in its Technical Report that the
12 2005 UGA will accommodate 747 new dwelling units over the next 15 years or will provide
13 for the 673 new dwelling units that it needs to support its projected population. Petitioner
14 criticizes the County's land capacity analysis with regard to the supply of land that will
15 actually be available in the Village Residential (VR) and Village Commercial (VC) zones for
16 residential uses. Citing the "EDAW Report"⁷, Petitioner says this report assumed that the
17 County would need from 50 to 90 acres for new institutional development. Petitioner notes
18 that this report pointed out historically institutional uses were typically sited on VR land in
19 the Eastsound UGA. Petitioner notes that the County's Technical Report makes no mention
20 of the Eastsound UGA's institutional needs and assumes all the available land in the VR
21 zone will be used for residential uses. Petitioner's Brief at 17.
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25 For the 2000 Eastsound UGA, Petitioner points again to the "EDAW Report" that projected
26 that the County would need 28 – 36 acres for commercial uses. For the 2005 UGA
27 Petitioner asserts that the County's Technical Report also does not analyze the Eastsound
28 UGA's commercial needs and provides no additional land for commercial uses. Petitioner
29 argues that it is most likely that these needs would be satisfied with VR lands due the
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32 ⁷ A consultant report commissioned by the County that analyzed the land supply needs for the 2000 Eastsound UGA

1 general rule that given the choice of using the land for commercial or residential, a
2 developer chooses commercial, due to its higher profitability. Petitioner concludes that
3 because the County's has failed to analyze the 2005 Eastsound UGA's institutional and
4 commercial needs, these zones will not be able to provide the needed new residential units
5 that the County assumes these designations will provide.
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8 **County's position**

9 The County asserts that its population estimates were derived from the 2000 census and
10 assumes a 2.2 percent growth rate. On this basis, the County estimates that a population of
11 4,956 lived on Orcas Island in 2005, of whom 905 lived in the Eastsound UGA. In 2020,
12 Orcas Island will grow to 6,869 people, with half the new growth allocated to the Eastsound
13 UGA. By applying both a 25 per cent market factor and 25 per cent seasonal market factor
14 to land supply needs of the projected population, the County says it needs sufficient
15 developable land for 673 dwelling units. The County declares that its land supply analysis
16 shows that it has available land for 747 new dwelling units. Respondent's Prehearing Brief
17 at 8.
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20 As for non-residential uses within the UGA, the County asserts that it is planning for a lesser
21 population figure than utilized in 2001 and that reducing its market factor has led to a
22 concomitant reduction in the need for more institutional land. The County responds that it
23 has been five years since the completion of the "EDAW study" that projected need for
24 institutional land within the UGA so some of the projected development of needed
25 institutions has already taken place. Respondent's Prehearing Brief at 10.
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28 The County responds that the needed number of dwelling units can be accommodated in
29 the Eastsound UGA, even if the land that Petitioner Klein asserts the Eastsound UGA needs
30 for commercial and institutional uses is used for these purposes. The County asserts that if
31 the County's land supply analysis assumed that residential uses would develop at about 3.5
32 units per acre, below the allowed density of 4 to 12 units per acre for these zones. The

1 County argues that the needed dwelling units could be accommodated, even with the
2 additional commercial and institutional uses that the EDAW report projects, if the residential
3 uses developed at allowed higher densities, for instance at 5.5 or 6.5 units per acre.
4 Respondent's Prehearing Brief at 11 and 12.
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7 **Petitioner's Reply**

8 Petitioner Klein replies that the analysis that the County's brief uses was not part of the
9 record or considered by the County. Petitioner's Reply Brief Compliance Hearing (February
10 6, 2006) at 13.
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12 Board Discussion

13 RCW 36.70A.110 (2) and RCW 36.70A.115 require the County to provide sufficient land for
14 commercial and institutional needs in the UGA. All three Boards have held that for meeting
15 specific requirements of the GMA, including the designation of UGAs, counties and cities
16 "must show their work" and the record must support their assumptions for meeting these
17 requirements. This Board has ruled that UGA designations require a record demonstrating
18 that GMA requirements for UGAs have been addressed: "There must be some application
19 of the appropriate requirements and factors and there must be evidence in the record that
20 such application was made and actually considered". *Berschauer v. Tumwater*, WWGMHB
21 94-2-0002 (Final Decision and Order, October 27, 1994). The Eastern Washington Growth
22 Management Hearings Board has also ruled that there must be evidence in the record to
23 show that the GMA requirements for UGAs are compliant. See *Knapp et al. v. Spokane*
24 *County*, EWGMHB Case No. 97-1-0015c (Final Decision and Order, December 24, 1997).
25 Similarly, the Central Puget Sound Hearings Board has held the following in regard to the
26 record necessary to support UGA designations:
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29 Actions of local governments are presumed valid; however when (UGA designations
30 or expansions are) the record must provide support for the actions the jurisdiction has
31 taken; otherwise the action may be determined to have been taken in error – clearly
32 erroneous. The Board will continue to adhere to the requirement that counties must

1 “show their work” when designating UGAs... *Kitsap Citizens v. Kitsap County*,
2 CPSGMHB Case No. 00-3-0019c (Final Decision and Order, May 29, 2001).

3 This Board has also held, “Urban growth represents more than just residential densities.
4 Commercial and industrial growth is a component that must be addressed.” See *Cotton v.*
5 *Jefferson County*, WWGMHB Case No. 98-2-0017 (Amended Final Decision and Order,
6 April 5, 1999).
7

8
9 Evidence in the record supports Petitioner Klein’s contention that the population projection
10 utilized by the County for the UGA designation in 2005 is greater than the population
11 allocation utilized in the UGA designation in 2000, even though the UGA designated in 2005
12 is geographically smaller than the UGA designated in 2000. Exhibit 2 at 5 and Exhibit 412
13 at 8. The record also shows that the County has failed to account for future commercial
14 and institutional growth in the UGA. The analysis utilized in 2000, “the EDAW Report”,
15 found a need for commercial and institutional uses in the twenty-year planning period. The
16 County analysis in 2005 found *no* need for commercial and institutional uses in the twenty-
17 year planning period, even though the EDAW Report” also assumed a smaller future
18 population. Exhibit 509 at 18 and 19. The March 6, 2006, Declaration of Don Kehrer
19 explains that the County assumed that existing institutional and commercial uses or their
20 expansion would serve future residents needs and no need for additional commercial or
21 institutional land was needed. Exhibit 11. However, the County’s analysis fails to provide a
22 rationale for this assumption or to explain why the EDAW assumptions are no longer
23 applicable. The Technical Report does not provide any analysis of commercial and
24 institutional needs for the UGA nor does the County’s land capacity analysis. Exhibit 2 at 6
25 – 8.
26
27
28

29 The County’s assumptions about the Eastsound UGA’s commercial and institutional needs
30 also differs from the assumption that the County used for the Lopez Village UGA, where the
31 County determined the future residents would create more demand for commercial and
32

1 institutional uses and allocated additional land for these purposes. Exhibit B at 7, attached
2 to Respondent's Prehearing Brief for Lopez Island UGA (January 27, 2006). We find,
3 therefore, that the County's land capacity analysis lacks an adequate consideration of future
4 needs for commercial and institutional uses in the Eastsound UGA.

5
6
7 Conclusion: The County has not "shown its work" that it has assessed the commercial and
8 institutional needs of the Eastsound UGA or that it has adequately analyzed land supply to
9 meet these needs of the Eastsound UGA's future residents. Therefore, in light of the entire
10 record, the land capacity analysis of the Eastsound UGA's future commercial and
11 institutional needs does not comply with RCW 36.70A.110(2) and RCW 36.70A.115.

12
13
14 **2. Urban Densities and Locational Criteria for Land Within the UGA**

15 ***Compliance Issue 3: Reconsider the inclusion of the westernmost, low-density***
16 ***properties in the Eastsound UGA and establish appropriate urban densities for***
a non-municipal UGA that comply with the GMA.

17 ***Klein Issue 4: Did San Juan County comply with the requirements of the***
18 ***Growth Management Act, including RCW 36.70A.110(1) and (3) as to the***
19 ***boundaries and sizing of the Eastsound UGA? (Klein Petition, Case No. 05-2-***
20 ***0022)***

21 ***Klein Issue 5: Did San Juan County's exclusion of Petitioner's property from***
22 ***the Eastsound UGA under Ordinance 13-2005 comply with RCW 36.70A.110,***
23 ***RCW 36.70A.115, RCW 36.70A.030(18), and RCW 36.70A.020(1), (2), and (4)?***
24 ***(Klein Petition, Case No. 05-2-0022).***

25 Positions of the Parties

26 Petitioner's Position

27 Petitioner Klein notes the County has eliminated from the UGA some of the westernmost
28 properties which contain built out subdivisions with private covenants prohibiting higher
29 density levels. Petitioner's Brief at 10. Nevertheless, he points out that the remaining parts
30 of this area still included in the UGA – one west of the airport which is zoned at two dwelling
31 units per acre, and one area of shoreline lots which is zoned at one dwelling unit per acre –
32

1 are significantly impacted by wetlands. Petitioner acknowledges that Ordinance 13-2005
2 allows for an affordable housing bonus of up to four dwelling units per acre for portions of
3 the area that are neither within 200 feet of the shoreline nor impacted by other physical
4 constraints making them unsuitable for urban development. Petitioner disputes the
5 County's assumption that these areas can provide 30 more units of housing before sewer is
6 extended to them. Petitioner Klein concludes that the presence of wetlands, the non-urban
7 lot pattern, and the lack of sewer service make these areas inappropriate for inclusion in the
8 UGA. Petitioner's Brief at 10 and 11.

10
11 Petitioner further argues that RCW 36.70A.110 (1) and (3) require the County to include
12 areas that are characterized by urban growth into the UGA first, and then include areas
13 where plans are in place to provide urban services. Petitioner asserts that the Eastsound
14 UGA now includes 71 parcels not served by sewer, while 52 parcels characterized by urban
15 growth and served by sewer have been removed from the UGA. Therefore, Petitioner
16 argues that the designation of the 2005 Eastsound UGA does not comply with RCW
17 36.70A.110 (1) and (3) because it has included properties not served by urban services
18 while it excluded properties like his where adequate public services and facilities exist.
19 Petitioner's Prehearing Brief at 20.

22 **County's Position**

23 San Juan County declares that it has reconsidered the inclusion of the westernmost, low-
24 density properties and has excluded a significant portion which have already been
25 developed in large lot sizes. The County asserts it has evaluated the impact of wetlands on
26 the remaining parcels in the UGA in this area and that these parcels were included because
27 they have development potential. The County contends that, based on *Quadrant v. Central*
28 *Puget Sound Growth Management Hearings Board*, 154 Wn.2d 224, 110 P.3d 1132(2005)
29 existing densities of one and two dwelling units an acre constitute lands "characterized by
30
31
32

1 urban growth” for purposes of including those properties in the UGA. Respondent’s
2 Prehearing Brief at 6 and 7.

3
4 The County also responds that Petitioner Klein has provided no support for his position that
5 his undeveloped rurally zoned property is characterized by urban growth or fully served with
6 existing urban services. San Juan County concludes that no need has been shown to
7 include the Klein parcel within the 20-year planning period. Respondent’s Prehearing Brief
8 at 13.
9

10
11 **a. Land “Characterized by Urban Growth”**

12 First, the Board will address Petitioner Klein’s argument that these properties are not
13 “characterized by urban growth”.
14

15
16 The Washington Supreme Court’s decision in *Quadrant*⁸ has provided new guidance on
17 what existing residential densities may be considered “characterized by urban growth” for
18 purposes of RCW 36.70A.110(1). We agree with the County that the Supreme Court in
19 *Quadrant* accepted King County’s use of areas developed at densities of one dwelling unit
20 per acre as “being characterized by urban growth” such that they could be included in the
21 fully contained community of Bear Creek.
22

23
24 Conclusion: Based on the *Quadrant* decision, we find that densities of one dwelling unit per
25 acre may be considered “characterized by urban growth” for purposes of establishing UGA
26 boundaries.
27
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30

31 ⁸ *Quadrant v. Central Puget Sound Growth Management Hearings Board*, 154 Wn.2d 224,110 P.3d
32 1132(2005)

1 **b. Urban Densities**

2 Extending UGA boundaries to include existing urban growth is not the same thing as
3 planning for future urban densities. In the context of non-municipal UGAs, urban densities
4 are especially important because the County is creating an urban growth area where no city
5 or town exists. Allowing suburban densities in a new UGA has the very real potential for the
6 creation of sprawl. Therefore, even though land with existing suburban densities may be
7 included within a UGA, urban densities and uses must be allowed on those lands in the
8 future. RCW 36.70A.110(2).
9

10
11 This Board has held that, as a rule of thumb, for urban growth areas to accomplish sprawl
12 reduction, residential densities of four units an acre are a minimum urban density. See
13 *Futurewise v. Whatcom County*, Case No. 05-2-0002. Even so, in that same case, we said
14 that circumstances such as the need to protect critical areas or to protect public health and
15 safety make densities of less than four units an acre in UGAs a compliant way in which to
16 harmonize the sprawl reduction goal with other GMA goals or requirements. *Ibid.*
17

18
19 In the Eastsound UGA, the remaining properties on the western side of the UGA, actually
20 have four different designations: Eastsound Residential – one unit per acre, East Sound
21 Residential—one unit per acre P, Eastsound Residential – two units per acre, and
22 Eastsound Residential – two units per acre P. Exhibit 1, Attachment A. The designations
23 with the “P” attached to them require that the land be platted to at least four units an acre
24 and additional units may be developed if they are developed for low or moderate income
25 housing. Exhibit 1, Attachment A. Up to six dwelling units per acre are allowed if developed
26 for moderate income housing, and up to eight dwelling units per acre are allowed for low
27 income housing. This innovative technique promotes sorely needed affordable housing in
28 San Juan County.
29
30
31
32

1 As for the Eastsound Residential zoning designations that allow one dwelling unit per
2 acre and two dwelling units per acre without additional density allowances, no evidence
3 in the record shows that these properties are environmentally constrained or that less
4 than urban densities are required on those lands to protect public health and safety. The
5 Eastsound UGA's designation is not a mandate imposed on the County, but a legitimate
6 option chosen by the County for help in meeting GMA goals to prevent sprawl, provide
7 for affordable housing, and ensure urban levels of service in UGAs. Therefore, where
8 designation of an unincorporated UGA is optional, including land where future urban
9 densities are not possible and for which urban services will not be provided, is not
10 consistent with RCW 36.70A.020(1)(2) and RCW 36.70A.110 (3). Nevertheless, the
11 need to harmonize other GMA goals such as environmental protection and protection of
12 public health and safety with the provision of urban services in an efficient manner and
13 reduction of low density development could provide a rationale for including land that
14 includes a pattern of "less- than-urban-but-more-than-rural-density lot", or, in other words,
15 "suburban development" in a county unincorporated UGA . If these areas are going to be
16 included in the UGA, urban services need to be extended to this area so that higher
17 densities can be achieved

18 Conclusion: The record does not show, or has the County claimed that local circumstances
19 dictate a need for suburban zoning for properties designated Eastsound residential – one
20 unit per acre or Eastsound – two units per acre. Under these circumstances this
21 designation is not an appropriate density for a UGA. On the other hand, properties
22 designated Eastsound residential - one acre P and Eastsound residential – two acre P do
23 require platting to at least four units an acre and would be appropriate densities for a UGA if
24 they were served by sewer during the planning period. Unfortunately urban levels of
25 services are not planned for all of these properties.

26 3. Sufficiency of Planning for Urban Levels of Service

27 In addition to the analysis of land capacity and accommodation of projected future
28 population; and whether the land in the UGA is "characterized by urban growth", the other
29 major criterion is the ability to provide urban services throughout the UGA in the 20-year
30 planning period. RCW 36.70A.020(12) (the public facilities and services goal) and
31 36.70A.110 (3) and (4).
32

1 As discussed *infra* at 10, the capital facilities plan for the Eastsound UGA must show that
2 urban levels of service are planned and feasible within the 20-year planning horizon. The
3 ESSWD's general facility plan does not clearly show if and when during the planning period,
4 sewer service will be provided to all of the westernmost residential areas, and to some of
5 the areas designated Industrial. Exhibit 3 at Figure 3, 11, and 22. Further, if some
6 properties are allowed to be developed during the planning period without an agreement to
7 connect to the sewer when it becomes available, the additional lots platted, but needing
8 urban services to develop to urban density, may never come to fruition. Without a
9 commitment to connect to the sewer, sewer delivery is likely to become too expensive
10 without the participation of the property owners who have developed their property at lesser
11 densities based on their private septic tanks. The County fails to require future development
12 in the Eastsound UGA to commit to connect to sewers when those sewers become
13 available.
14
15

16
17 Most problematic are the westernmost designations of Eastsound Residential – one acre
18 and Eastsound Residential – 2 acres. Again, the ESSWD does not guarantee sewer to
19 these designations during the planning period. In fact, it appears that there is no plan to
20 provide sewer service to the zoning designation Eastsound Residential –one unit an acre
21 during the planning period. Exhibit 3 at Figure 3.
22

23
24 Conclusion: Because the capital facilities plan fails to provide for urban levels of sewer
25 service to all areas of the UGA during the 20-year planning period, the boundaries of the
26 UGA are not compliant with RCW 36.70A.110(3) and (4); and RCW 36.70A.020(12).
27

28 **4. Inclusion of the Klein property in the UGA**

29
30 Petitioner Klein argues that the County lacks sufficient land supply for housing and other
31 urban uses. Therefore, he asserts property like his and others like it should be included in
32 the UGA. However, this Board has held that even if property is “characterized by urban

1 growth... existing urbanization does not dictate UGA inclusion". Nor does the fact "that
2 water and sewer services are or could be available to it does not direct that an area be
3 included in an UGA". See *Achen et al. v. Clark County*, WWGMHB Case No. 95-2-0067c
4 (Final Decision and Order, September 20, 1995).

6
7 We have found earlier in this decision that the County must "show its work" to determine
8 that it has included the appropriate amount of land for commercial and institutional growth.
9 Also, we pointed out in the discussion of issue above, the ESSWD facilities plan does not
10 clearly show whether and how some of the properties will have sewer service extended to
11 them during the 20 year planning period nor as the County adopted any information as part
12 of its capital facilities element to explain how this will be done. Until the County includes
13 information its capital facilities element showing sewer service to all parts of the UGA within
14 the 20 year planning period, the designation of the Eastsound UGA does not comply with
15 RCW 36.70A.110 (3) and RCW 36.70A.020 (1) and (2). However, failure to complete this
16 work is a separate determination from the determination whether or not the Klein property is
17 necessary and appropriate for inclusion in the GMA.
18

19
20 Petitioner makes a good case for the inclusion of his property and the surrounding property
21 in the UGA. While including Petitioner Klein's property may make urban densities easier to
22 achieve earlier in the planning period, the Board's role is to determine whether challenged
23 actions are compliant with the GMA, not what is best planning practice. Even if Petitioner's
24 property is also characterized by urban growth, the choice of which properties to include in
25 the UGA is within the discretion of the County Council.
26
27

28 Further, even if the County determines that properties not currently served by sewer cannot
29 be served within the 20-year planning period, and therefore cannot be included in the UGA,
30 the County is not obligated to include the Klein property in the UGA. As this Board said in
31 its October 15, 2002 Final Decision and Order/Compliance Order, "The County has
32

1 discretion to determine how it will channel growth as long as those decisions comply with
2 the GMA". Final Decision and Order/Compliance Order (October 15, 2002) at 15.
3 Summary of Conclusions: The inclusion of properties in the Eastsound UGA which have
4 existing suburban residential densities does not violate RCW 36.70A.110 (1). However,
5 zoning areas within the UGA at less than urban densities without evidence showing the
6 local circumstances that warrant such lower densities does not comply with RCW
7 36.70A.020 (1) (2) and RCW 36.70A.110(1). Further, compliant UGA boundaries must be
8 based in a capital facilities plan that demonstrates that urban levels of service will be
9 provided throughout the UGA in the 20-year planning period. Since the County's capital
10 facilities element for the Eastsound UGA does not demonstrate that urban levels of service
11 are planned for the entire UGA, the boundaries do not comply with RCW 36.70A.110(3) and
12 RCW 36.70A. 020(12). Nevertheless, the determination of whether to include the
13 Petitioner's property in the UGA rests at the discretion of the County Council. Petitioner has
14 not carried his burden of proof that the exclusion of his property from the UGA violates RCW
15 36.70A.110 (3).
16
17
18

19 **5. Eastsound Market Factor**

20 ***Compliance Issue 2: Reconsider the Eastsound market factor. (Compliance*** 21 ***Issue)***

22 In his brief and at argument, Petitioner Klein stated that he had no objection to the market
23 factor for the Eastsound UGA now being used by the County. Petitioner's Brief at 9. No
24 other party raised an objection to this issue.
25

26 Conclusion: The County's actions are presumed valid upon adoption pursuant to RCW
27 36.70A.320(1). No objection to the market factor used by the County has been raised.
28 Therefore, the Board finds that the market factor used in determining the size of the
29 Eastsound UGA is in compliance with RCW 36.70A.320(1).
30
31
32

1 **C. Affordable Housing**

2 ***Does the new Eastsound UGA boundary and accompanying development regulations***
3 ***make adequate provision for affordable housing in the UGA? (Campbell Petition,***
4 ***Case No. 05-2-0021).***

5 Positions of the Parties

6 Petitioner's Position

7
8 Petitioner Campbell notes that the growth rate in San Juan County has declined. He
9 suggests that this can reasonably be assumed to be due to the lack of housing affordability.
10 Affordable housing, he claims, is a serious issue for 18 percent of the County's population.
11 Petitioner's Prehearing Brief (January 6, 2006) at 4.
12

13
14 Petitioner points out that the County's analysis of needed land for the Eastsound UGA does
15 not break out the growth in the low income populations as the earlier analysis for the UGA
16 did. Petitioner notes that the County projects that 50 percent of Orcas Island's growth will
17 occur within the Eastsound UGA, and claims that almost all of the Island's low income
18 population will reside there.
19

20
21 Petitioner does his own assessment of very low and low income needs in the Eastsound
22 UGA. By applying a market factor to the number of units needed, he determines that 500
23 new units of low and very income housing will be needed. He then shows the parcels within
24 the UGA that he believes will not be available for affordable housing because they will
25 provide three units or less of housing or are commercially zoned or shoreline sites.
26 Petitioner determines that these sites' elimination will cause the loss of 362 units of suitable
27 sites for low income housing. Using much of the same analysis as Petitioner Klein,
28 Petitioner Campbell concludes that land for 157 units will not be available because this will
29 be absorbed by commercial and institutional development for which the County has not
30 accounted. Petitioner Campbell concludes that Eastsound UGA has a shortfall of 190 units
31 of low income housing due to the County's lack of analysis of sites not suitable for low
32

1 income housing and the amount of land needed for commercial and industrial development.
2 Petitioner's Brief at 5 – 9.
3

4 **County's Position**

5
6 The County uses the argument discussed on page 16 that it allowed for density in the VC
7 and VR zone will provide sufficient land for housing and commercial and institutional uses.
8

9 The County argues that its affordable housing bonus creates affordable housing
10 opportunities. The County points out that lands in the following zones allow for a density
11 bonus for affordable housing: Eastsound Residential - 1/acre, Eastsound Residential –
12 1acre /P, East Sound Residential – 2 acres, and Eastsound Residential – 2 acres/P. After
13 subtracting the existing residential units and apply the RDP to the remaining land, the
14 County estimates that land is available for 114 potential dwelling units. Applying the
15 residential density bonus to the parcels where RDP exists, the County projects that between
16 456 and 912 affordable units could be provided depending on how much of the density
17 bonus is used. While the County says it realizes it is hard to predict how many units would
18 be produced by the density bonus, the County says it has created a mechanism for
19 affordable housing. The County argues that Petitioner Campbell has not shown how
20 altering designation of the Eastsound UGA will provide for affordable housing needs.
21
22 Respondent's Brief at 12.
23

24 25 Board Discussion

26 To determine whether Petitioner Campbell has met his burden of proof concerning his
27 allegation that the County's Eastsound UGA boundary and accompanying development
28 regulations do not provide for affordable housing, we need to examine GMA's goal and
29 requirement for housing. The GMA's housing goal states, "Encourage the availability of
30 affordable housing to all economic segments of the population of this state, promote a
31
32

1 variety of residential densities and housing types, and encourage preservation of existing
2 housing stock.” RCW 36.70A.020(8).

3
4 In addition to the affordable housing goal, RCW 36.70A.070(2) contains the GMA’s
5 requirements for affordable housing. That provision of the GMA requires the County to
6 include a housing element in its comprehensive plan that incorporates the following: (a) an
7 inventory and analysis of existing and projected housing needs that identifies the number of
8 housing units necessary to manage projected growth; (b) a statement of goals, policies,
9 objectives, and mandatory provisions for the preservation, improvement, and development
10 of housing, including single-family residences; (c) identification of sufficient land for housing,
11 including, but not limited to, government-assisted housing, housing for low-income families,
12 manufactured housing, multifamily housing, and group homes and foster care facilities; and
13 (d) adequate provisions for existing and projected needs of all economic segments of the
14 community. RCW 36.70A.070(2).
15
16

17
18 The inclusion of the housing element is a requirement for counties and cities when they
19 complete the requirement for adopting a comprehensive plan pursuant to RCW 36.70A.040.
20 San Juan County adopted its first comprehensive plan pursuant to RCW 36.70A.040 on
21 June 15, 1998. Petitioner Campbell challenged the comprehensive plan’s failure to provide
22 affordable housing for all economic segments and the housing element was found out of
23 compliance on that issue, among others, in 1999. See *Town of Friday Harbor, Fred R.*
24 *Klein, John M. Campbell, and Lynn Bahrych, et al., v. San Juan County* (Final Decision and
25 Order, July 21, 1999). Subsequently, however, this Board found that the housing element
26 was compliant. (Compliance Order, May 7, 2001.)
27
28

29
30 The compliance efforts with respect to the UGA do not open the County’s housing element
31 to challenge. The County’s current housing element is based on the 1990 census and has
32 not yet been updated. The Eastsound UGA population projections are based on the 2000

1 census. The housing element will be reviewable when the County completes its
2 comprehensive plan update according to RCW 36.70A.130. At that time, the County will be
3 required to ensure that its housing element and its land use element which includes the
4 Eastsound UGA, are coordinated and consistent. In a similar situation, this Board said:

5 "We concur with the County's position that the affordable housing element is not a
6 requirement of the Act in regard to IUGAs. Petitioners have failed to point to any
7 section of the Act which explicitly requires this and have failed to demonstrate that
8 the County's actions in this regard are clearly erroneous."

9 Daniel Smith et al. v. Lewis County, Case No. 98-2-0011c (Final Decision and Order, April
10 5, 1999.

11 Likewise, we find that updating the County's work on its housing element is not part of these
12 compliance efforts.

13
14 In regard to the GMA's housing goal, the County has not ignored it in designating the
15 Eastsound UGA. San Juan County has added a density bonus program for low and
16 moderate income housing in low density areas in the development regulations adopted to
17 implement the Eastsound UGA. The development regulations also include a requirement
18 that the land must be platted in these areas to ensure that some of these units can be
19 developed in the future where it appears that utilities supporting urban level services are not
20 currently available. Ordinance 13-2005. Exhibit 1 at 11. This helps implement the County's
21 current housing policies. As we discussed earlier in this order, only if sewer service
22 becomes available, can this bonus provide needed housing for low and moderate income
23 households. Nevertheless we cannot conclude that the County's efforts are clearly
24 erroneous. We find that the County has complied with RCW 36.70A.020(4).

25
26
27 We note that the Petitioner's following argument was not provided to the County. Petitioner
28 Campbell presents a detailed analysis on why the Eastsound UGA will not do an adequate
29 job of providing the appropriate percentage of dwelling units for the percentage of low and
30 very low income persons who will reside on Orcas Island during the planning period.

31
32 Petitioner makes an assumption about how many units the density bonus will produce, while

1 the County discusses the range of possibilities the density bonus will produce. We can find
2 no evidence in the record that Petitioner presented his scenario to County decision-makers
3 for their consideration during the adoption process. Without evidence in the record that the
4 County was apprised of the argument which Petitioner now seeks to raise, the Board can
5 not consider it.
6

7
8 Conclusion: The County addressed the need for affordable housing in its planning for the
9 Eastsound UGA. The County's analysis of housing demand considered the needs of lower
10 income residents and the County has provided density bonuses to encourage affordable
11 housing within the UGA. These efforts show appropriate consideration of the GMA housing
12 goal, RCW 36.70A.020(4).
13

14
15 The Board's May 7, 2001 Compliance Order in this case found the housing element
16 compliant. Adoption of Ordinance 13-2005 did not revise the housing element and open it
17 to challenge. Therefore, the challenge to RCW 36.70A.070(2) fails.
18

19 **4. Invalidity**

20 ***Klein Issue 6: Do any of the above actions substantially interfere with the goals of***
21 ***the Act, particularly RCW 36.70A.020(1) and (4)? (Klein Petition, Case No. 05-2-0022).***
22

23 Positions of the Parties

24 **Petitioner's Position**

25
26 Petitioner Klein asserts the Eastsound UGA has been out of compliance for four and half
27 years. Petitioner Klein argues that the County's failure to bring the Eastsound UGA into
28 compliance represents long-term failure of the County to encourage urban growth in areas
29 where adequate capital facilities exist or can be provided efficiently and cost effectively and
30 to encourage affordable housing. He argues that these failures substantially interfere with
31 Goals 1 and 4 of the GMA. Petitioner quotes from *Abenroth v. Skagit County*, WWGMHB
32 97-2-0060c (Compliance Order, February 23, 1998) where the Board ruled that "long-term

1 failure to meet a schedule of compliance would result in a reconsideration of invalidity and
2 possible recommendation for sanctions". Petitioner's Prehearing Brief at 26 and 27.

3 4 **County's Position**

5 San Juan County maintains that the designation of the Eastsound UGA furthers the goals of
6 the GMA because it prevents sprawl and reduces development pressure on rural lands. The
7 introduction of an affordable housing density bonus provides for affordable housing
8 opportunities in Eastsound. The County says that this Board has acknowledged San Juan
9 County's challenges in planning for its non-municipal UGAs and its steady progress in
10 meeting the requirements of the GMA. The County contends that imposing invalidity does
11 not further the goals of the GMA. Respondent's Brief at 14.
12
13

14 Board Discussion

15 While the Board has ruled that long-term failure to meet schedules of compliance could
16 result in a finding of invalidity, the Board has also ruled: "... invalidity should be imposed if
17 continued validity of noncompliant regulations would substantially interfere with the local
18 jurisdiction's ability to engage in GMA compliant-planning". *Futurewise v. Thurston County*,
19 WWGMHB Case No. 05-2-0002 (Final Decision and Order, February 12, 2004). Also see
20
21
22 *Butler v. Lewis County*, WWGMHB Case No. 99-2-0027c (Order Finding Noncompliance
23 and Invalidity, February 2, 2004).
24
25

26 The Board agrees that four and half years is ordinarily a long time to achieve compliance.
27 However, here, the County's major task in establishing the non-municipal UGA is in
28 planning for urban services, particularly sewer, throughout the UGA. This is a major task for
29 any jurisdiction, much less a rural county with limited resources. The Board also notes that
30 designating an Eastsound UGA is not a mandate, but a far-sighted option the County has
31 chosen to further GMA goals to provide affordable housing for all economic segments of the
32 community and to reduce sprawl. We encourage the County to complete its work because

1 a compliant Eastsound UGA is the County's best hope for achieving these goals.
2 Further, San Juan County has filed compliance reports on time and asked for extensions of
3 the compliance period. We also observe that the County has not refused to try to comply
4 with Board orders and has made slow, steady progress in getting the information and taking
5 action to achieve compliance. Most importantly, San Juan County has promised to keep
6 Ordinance 3-2004, a voluntary moratorium of subdivisions of less than one unit per five
7 acres in areas where sewers are not currently available, in place until the Eastsound UGA is
8 found compliant by this Board. Ordinance 3-2005, Exhibit 2 at 3.
9

10
11 Conclusion: We determine that as long as the County keeps Ordinance 3-2004 in place for
12 the Eastsound UGA that the designation of the Eastsound UGA does not interfere with
13 Goals 1 and 4 of the GMA. We decline to impose invalidity at this time.
14

15 **VI. FINDINGS OF FACT**

- 16
- 17 1. San Juan County is located west of the crest of the Cascade Mountains and plans in
18 accordance with RCW 36.70A.040.
 - 19 2. On October 25, 2005, San Juan County approved Ordinance No. 13-2005 designating
20 the Eastsound UGA urban growth boundaries and adopting implementing development
21 regulations.
 - 22 3. Petitioners Klein and Campbell participated in writing and orally in the adoption of
23 Ordinance No. 13-2005
 - 24 4. The County relies upon the Eastsound Sewer and Water District (ESSWD), a private
25 purveyor of sewer and water services, to provide urban levels of those services to the
26 Eastsound UGA.
 - 27 5. The County has not adopted the ESSWD General Sewer Plan nor has it incorporated
28 into its comprehensive plan the capital facilities information pertinent to the Eastsound UGA
29 contained in the General Sewer Plan.
30
31
32

- 1 6. The ESSWD's General Sewer Plan does not include a six-year financing plan for future
2 facilities needed to serve the Eastsound UGA.
- 3 7. The ESSWD General Sewer Plan does not describe the facilities that will be needed
4 during the 20-year planning period in some parts of the urban growth area (especially for
5 those areas that have been designated for densities of one or two dwelling units per acre),
6 as well as in some designated Industrial Areas.
- 7 8. The ESSWD Sewer General Plan does not show that sewer service can feasibly be
8 extended to all portions of the Eastsound UGA over the course of the 20-year planning
9 period.
- 10 9. The County's storm drainage plan does not include a six-year financing plan.
- 11 10. The County's storm drainage plan does not show how storm drainage facilities will be
12 provided throughout the Eastsound UGA during the 20-year planning period.
- 13 11. The ESSWD General Sewer Plan shows sewer lines running outside the current
14 Eastsound UGA boundaries which indicate service to areas that now are outside the UGA
15 boundaries.
- 16 12. The map of service in the ESSWD General Sewer Plan is not coordinated with the map
17 of the Eastsound UGA in the County's comprehensive plan.
- 18 13. Ordinance 3-2004 imposes a voluntary moratorium on development of property inside
19 the Eastsound UGA to residential densities of 1 dwelling unit per 5 acres in areas where
20 sewers are not available, until such time as the Eastsound UGA is found compliant by this
21 Board.
- 22 14. The County projects that it will accommodate a greater population in a geographically
23 smaller Eastsound UGA in 2005 than it did in the 2000 UGA. Exhibit 2 at 5 and Exhibit 412
24 at 8.
- 25 15. The EDAW report provided data for the designation of the Eastsound UGA in 2000 and
26 showed that the County needs additional land to accommodate future institutional and
27 commercial growth in the UGA. This was true even though the population for which
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1 commercial and institutional needs were projected was smaller in 2000 than the population
2 projected in 2005. Exhibit 509 at 18 and 19.

3 16. Unlike the EDAW report, the County's Technical Report does not provide any analysis of
4 commercial and institutional needs for the UGA in 2005. The County's land capacity
5 analysis similarly lacks an analysis of the need for commercial and institutional lands in the
6 UGA in 2005. Exhibit 2 at 6 – 8.

7
8 17. The Eastsound UGA boundaries designated in Ordinance 13-2005 include property that
9 has been developed at densities of one dwelling unit per acre and two dwelling units per
10 acre.

11 18. The County has changed the zoning designations of lands previously zoned for one and
12 two dwelling units per acre to "Eastsound one unit per acre P" and "Eastsound two units per
13 acre P". These zones require that the land be platted to at least four dwelling units an acre
14 and that the additional units above the original zoning must be developed with low or
15 moderate income housing.

16
17 19. The zoning designations "Eastsound one unit per acre P" and "Eastsound two units per
18 acre P" also allow additional residential development under certain conditions. Up to six
19 dwelling units of moderate income housing, and up to eight dwelling units for low income
20 housing are allowed in these zones unless otherwise constrained by environmental or
21 topographical factors.

22
23 20. The zoning designations "Eastsound Residential one unit per acre" and "Eastsound
24 Residential two units an acre" allow development of a maximum of one unit an acre or two
25 units an acre respectively.

26 21. No evidence in the record shows that the properties designated "Eastsound Residential
27 one unit per acre" and "Eastsound Residential two units per acre" are environmentally
28 constrained or that zoning at less than urban densities is necessary to protect public health
29 and safety.

30
31 22. The County fails to require future residential development in the Eastsound UGA to
32 commit to connect to sewers when those sewers become available.

23. The boundaries of the Eastsound UGA designated in Ordinance 13-2005 do not include the Klein property, although urban levels of sewer and water service are available for that property. The Klein property is zoned for rural densities and has not been developed at urban or suburban densities.

24. No party objected to the market factor used for the Eastsound UGA.

25. The May 7, 2001, Compliance Order in this case found the County's housing element compliant with the GMA.

VII. Conclusions of Law

- A. The County's capital facilities element fails to incorporate a capital facilities plan for sewer in the Eastsound UGA that includes a 6-year financing plan into its comprehensive plan is clearly erroneous and not compliant with RCW 36.70A.070(3).
- B. The County's capital facilities element fails to include a six-year financing plan for its stormwater drainage facilities for the Eastsound UGA is clearly erroneous and not compliant with RCW 36.70A.070 (3)(a) – (d) and RCW 36.70A.020(12).
- C. The County's "failure to show its work" for commercial and institutional needs and to adequately analyze the needed land for commercial and institutional uses is clearly erroneous and causes the boundaries of the Eastsound UGA not to comply with RCW 36.70A. 110(2) and RCW 36.70A.115.
- D. The inclusion of properties which have existing suburban residential densities into the Eastsound UGA is not clearly erroneous and complies with 36.70A.110 (1).
- E. Zoning areas within the UGA at less than urban densities without evidence showing the local circumstances that warrant such lower densities is clearly erroneous and does not comply with RCW 36.70A.020 (1) (2) and RCW 36.70A.110(1).
- F. The failure of the capital facilities element for the Eastsound UGA to demonstrate that urban levels of service are planned for the entire UGA during the 20-year planning period is clearly erroneous and causes the boundaries of the UGA not to comply with RCW 36.70A.110(3) and RCW 36.70A. 020(12).
- G. The exclusion of the Klein property from the UGA is within the discretion of the County Council and is not clearly erroneous. RCW 36.70A.110 (3) pursuant to RCW 36.70A.320(2).
- H. The County's strategy for creating affordable housing in the Eastsound UGA is not clearly erroneous and complies with RCW 36.70A.020(4) and RCW 36.70A.070(2).
- I. With Ordinance 3-2004 in place until the Eastsound UGA is found compliant, the designation of the Eastsound UGA does not interfere with the County's fulfillment of GMA goals 1, 2 and 4. RCW 36.70A.020 (1) (2) and (4).

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VIII. ORDER

San Juan County must take legislative action to bring the designation of the 2005 Eastsound UGA into compliance with RCW 36.70A.070(3)(a) – (d), RCW 36.70A.110(1) – (3), RCW 36.70A.020 (1), (2), and (12), and RCW 36.70A.115 in accordance with this decision within 180 days. The following schedule will apply:

Item	Date Due
Compliance	December 18, 2006
Compliance Report	January 4, 2007
Objections to a Finding of Compliance	January 25, 2007
Response to Objections	February 15, 2007
Compliance Hearing	February 26, 2007

The Board recognizes that developing a compliant capital facilities plan in cooperation with a private utility provider is a task of unusual scope and complexity for a rural county with limited planning resources. Even though this compliance effort has taken several years, the Board invites the County to propose an alternate reasonable and feasible compliance schedule for completing its remand based on a work plan that identifies a timeline and resources in the next 60 days.

Pursuant to RCW 36.70A.300 this is a final order of the Board.

Reconsideration. Pursuant to WAC 242-02-832, you have ten (10) days from the date of mailing of this Order to file a petition for reconsideration. The original and three copies of a motion for reconsideration, together with any argument in support thereof, should be filed with the Board by mailing, faxing, or otherwise delivering the original and three copies of the motion for reconsideration directly to the Board, with a copy to all other parties of record. **Filing means actual receipt of the document at the Board office.** RCW 34.05.010(6), WAC 242-02-240, and WAC 242-02-330. The filing of a motion for reconsideration is not a prerequisite for filing a petition for judicial review.

Judicial Review. Any party aggrieved by a final decision of the Board may appeal the decision to superior court as provided by RCW 36.70A.300(5). Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil

1 Enforcement. The petition for judicial review of this Order shall be filed with the
2 appropriate court and served on the Board, the Office of the Attorney General, and all
3 parties within thirty days after service of the final order, as provided in RCW
4 34.05.542. Service on the Board may be accomplished in person or by mail, but
5 service on the Board means actual receipt of the document at the Board office within
6 thirty days after service of the final order. A petition for judicial review may not be
7 served on the Board by fax or by electronic mail.

7 Service. This Order was served on you the day it was deposited in the United States
8 mail. RCW 34.05.010(19)

9 Entered this 20th day of June 2006.

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13 _____
14 Holly Gadbow, Board Member

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16 _____
17 Margery Hite, Board Member

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19 _____
20 Gayle Rothrock, Board Member

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APPENDIX A

Origin

These cases have had a long and tangled procedural history. This procedural history deals with only the parts of the case relating to the designation of Lopez Village and Eastsound UGAs, with an emphasis on the Eastsound UGA. The Board's deliberations on issues related to these UGAs began when Petitioners Dorothy Austin Mudd (now known as Dorothy Austin), Fred Klein, and John Campbell, and Joint Petitioners Joanne Smith and Fred Ellis filed petitions challenging San Juan County's October 2000 comprehensive plan amendments regarding the designation of these UGAs.⁹ Petitioner Austin raised issues in regard to both UGAs. Petitioners Ellis and Smith challenged only the Lopez Village UGA, while Petitioners Klein and Campbell raised issues concerning the Eastsound UGA. On December 14, 2000, the Board consolidated these petitions with other petitions challenging the October 2000 comprehensive plan amendments. The case was captioned *Michael Durland, et al, v. San Juan County*, WWGMHB Case No.02-0062c. The Opal Community Land Trust, along with several other parties, was granted intervention in the consolidated case on January 23, 2001.

This case was heard with the compliance issues in *Town of Friday Harbor, Fred R. Klein, John M. Campbell, Lynn Bahrych et al., v. San Juan County*, WWGMHB Case No. 99-2-0010c.

The Board's May 7, 2001 Final Decision and Order in these cases ordered San Juan County to do the following in regard to the designation of the Lopez Village and the Eastsound UGAs: establish non-municipal boundaries using RCW 36.70A.110 criteria and to establish these boundaries only after a complete capital facilities and services analysis.

⁹ Petitioner Austin's petition was given Case No. 00-2-0056, Petitioner Klein's Petition given Case No. 00-2-0057, Petitioners Smith and Ellis's petition was given Case No. 00-2-0058, and Petitioner Campbell's petition was given 00-2-0059.

1 Fred Klein v. San Juan County, Case No. 02-2-0008

2 On July 13, 2002, Fred Klein filed a petition for review challenging Ordinance 4-2002, the
3 action San Juan County had taken for the purpose of complying with the Board's May 7,
4 2001 Final Decision and Order. Mr. Klein raised issues concerning compliance of the
5 Eastsound UGA. This case has not been consolidated with any other case, but has been
6 heard with other cases related to the Eastsound UGA issues.
7

8
9 October 15, 2002 Final Decision and Order

10 After a September 10, 2002 compliance hearing in Case No. 99-2-0010c and Case No. 00-
11 2-0062c and hearing on the merits in Case No. 02-2-0008, the Board found the following in
12 regard to Eastsound UGA:

- 13 • Complete an Eastsound UGA capital facilities analysis with respect to wastewater
14 and drainage services.
- 15 • Reconsider the Eastsound market factor.
- 16 • Reconsider the inclusion of the westernmost, low-density properties in the Eastsound
17 UGA and establish appropriate urban densities for a non-municipal UGA.
18

19
20 Short period of consolidation with WWGMHB Case No. 03-2-0003c

21 On February 29, 2003, WWGMHB Case No. 99-2-0010c and WWGMHB Case No. 00-2-
22 0062c was consolidated with *Friends of the San Juans, Lynn Bahrych, Joe Symons et al., v.*
23 *San Juan County*, WWGMHB 03-2-0003c, a case rising from a petition challenging San
24 Juan County's regulations for accessory dwelling units (ADUs). This case was captioned as
25 *Friends of the San Juans, Lynn Bahrych, Joe Symons et al., v. San Juan County*.
26

27
28 Following a request for an extension of the compliance period for the issues related to the
29 Lopez Village and the Eastsound UGAs, along with opposition from several petitioners, the
30 Board issued a 90 day compliance period extension on April 17, 2003 for the issues related
31 to the noncompliant UGAs.
32

1 On October 7, 2003, the Board divided this consolidated case. The compliance issues
2 related to the ADU regulations remained in WWGMHB Case No. 03-2-0003c, while the
3 compliance issues related to the UGAs were placed in WWGMHB Case No. 00-2-0062c.
4

5
6 Several Compliance Period Extensions

7 In its December 19th Compliance Order/ Extension of Time order in Case Nos. 00-2-0062c
8 and 02-2-0008, the Board granted the County a 60 day extension of the compliance period
9 to prepare a work plan for the completion of the remand work related to the Lopez Village
10 and Eastsound UGAs. After the County's submission of a work plan on February 17, 2004
11 and Ordinance 3-2004 that prohibited subdivisions of less than one unit per five acres in the
12 areas of the Eastsound UGA that did not have sewer service, on March 2, 2004, the Board
13 granted an extension of the compliance period for both the Lopez Village and Eastsound
14 UGAs until November 15, 2004.
15

16
17 On November 8, 2004 the County submitted a progress report and a request from the
18 County for another 180 day extension of the compliance period. The County stated that the
19 lack of progress in completing the work necessary for making the Eastsound and Lopez
20 Island was caused by rapid turnover in staff, lack of institutional knowledge of new staff, and
21 the inability of consultants to obtain needed information due to this staff turnover to
22 complete capital facilities planning work. At the November 30, 2004, compliance hearing,
23 the County stressed the County Commissioners were still committed to completing the
24 necessary work to make the Eastsound and Lopez Village UGAs compliant. The Board
25 granted a 270-day compliance extension due to the scope and complexity of capital facilities
26 planning and the County's prohibition of subdivisions in areas of the UGAs not served by
27 sewers.
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1 On August 12, 2005, San Juan County submitted a request for extension of time to
2 complete the remand work for Eastsound Urban Growth Area and a progress report. On
3 September 1, 2005, the Board extended the compliance period until November 10, 2005.
4

5 Case No. 05-2-0019c
6

7 Stephen Ludwig filed a petition for review challenging, among other things, Ordinance 9-
8 2005 and the Determinations of Nonsignificance for the Lopez Island UGA, the Lopez
9 Village, Water Supply Report and Recommendations and the Abbreviated Coordinated
10 System Plan.
11

12 A prehearing conference was held on October 10, 2005. Stephen Ludwig represented
13 himself, Deputy Prosecutor Cameron Carter represented San Juan County, and Board
14 Member Holly Gadbow presided.
15

16
17 On October 11, 2006, the Presiding Officer consolidated this case with Case No. 00-2-
18 0062c and rescheduled the compliance hearing in Case No. 00-20062c to coincide with the
19 February 27, 2006 hearing on the merits in Case No. 05-2-0019. This case was captioned,
20 for a short time, as Case No. 00-2-0062c.
21

22
23 Also, on October 11, 2006, the Presiding Officer issued a Notice of Requirements for
24 Participation in Case No. 00-2-0062c and Case No. 02-2-0008 and Intent to Participate
25 Form. Based on this notice and intent to participate forms returned to the Board by the
26 required deadline, the Presiding Officer issued an order establishing the parties on
27 October 21, 2005.
28

29
30 Shortly after this, Michael Durland requested that the Board re-caption Case No. 00-2-
31 0062c. Mr. Durland explained that although he had been a petitioner in this case several
32 years ago, his issues had been resolved early in the proceedings and because he had no

1 interest in the case, he wanted his name removed from the caption. The Board issued an
2 order on October 21, 2005 that re-captioned Case No. 00-2-0062c as *Stephen F. Ludwig, et*
3 *al., v. San Juan County*, WWGMHB Case No. 05-2-0019c.
4

5 On October 26, 2006, the Board received a Joint Motion from the parties to the Ludwig
6 petition to extend the date for issuing the Final Decision and Order for the issues raised in
7 the Ludwig petition. The Board granted the extension of the Final Decision and Order for
8 the Ludwig petition issues for 30 days to April 19, 2006.
9

10
11 On October 28, 2006, a combined Prehearing Order/ Compliance Order for Case No. 05-2-
12 0019c and a Compliance Prehearing Order for Case No. 02-2-0008 was issued.
13

14
15 On November 29, 2005, the County submitted its Report of Actions Taken that included
16 Ordinance 13-2005 establishing the boundaries of the Eastsound UGA.
17

18 The Board received on December 9, 2005, a stipulation from Fred Klein and San Juan
19 County to allow certain additions to the record. The Board issued on order on allowing
20 these additions to the record on January 3, 2006.
21

22
23 *John Campbell v. San Juan County*, Case No. 05-2-0021 and *Fred Klein v. San Juan*
24 *County*, Case No. 05-2-22.

25 John Campbell filed a petition for review challenging Ordinance 13-2005 establishing the
26 boundaries for the Eastsound UGA because it lacked sufficient provision for affordable
27 housing. This petition was given Case No. 05-2-0021. A telephonic prehearing conference
28 was held on December 19, 2005, with Petitioner Campbell, San Juan County Deputy
29 Prosecutor Cameron Carter, and Board Member Holly Gadbow attending. A prehearing
30 order was issued on that date. On December 23, 2005, Petitioner Campbell filed a motion
31
32

1 to amend the prehearing order issue statement. Finding no objection from the County, an
2 amended prehearing order was issued on January 3, 2006.

3
4 Fred Klein filed a petition for review also challenging Ordinance 13-2005. A telephonic
5 prehearing conference was held on January 6, 2005, with Petitioner Klein, Deputy San
6 Juan County Prosecutor Cameron Carter, and Board Member Holly Gadbow attending. A
7 prehearing order was issued on January 10, 2006.
8

9
10 Also, on January 10, 2006, the Presiding Officer consolidated Case No. 05-2-0021 and
11 Case No. 05-2-0022. The case was captioned *John Campbell et al., v. San Juan County*.
12 As discussed at the prehearing conference, in Case No. 05-2-0022, the deadline for the
13 County's response in Case No. 05-2-0019c and Case No. 02-2-0008 was extended to
14 January 27, 2006, the same day as the response briefs for the cases in consolidated Case
15 No. 05-2-0022c. Likewise, the Petitioners' briefs' deadlines in all these cases became
16 February 6, 2006.
17

18
19 John Campbell filed a motion to supplement the record on January on January 5, 2006
20

21
22 On January 6, 2006, Petitioners Klein and Campbell filed their prehearing briefs.
23 Respondent filed its brief relating to all three cases on January 27, 2006. Petitioners Klein
24 and Campbell filed response briefs on February 6, 2006.
25

26 Dorothy Austin added as a party

27 On February 1, 2006, Dorothy Austin submitted an intent to participate form and explained
28 that misunderstanding between her and her attorney was the reason the form was not
29 submitted in a timely way. The February 6, 2006, Amended Order Establishing Parties for
30 Various Parts of This Case added Dorothy Austin as a party for the Eastsound Only Issues
31 of Case No 05-2-0019c.
32

1 On February 13, 2005, the Board received a motion to supplement the record and file a late
2 brief from Dorothy Austin.

3
4 Hearing and Post Hearing Activities

5 On February 28, 2006, at the Lopez Islander, the Board held a combined hearing on the
6 merits on the issues raised in the Campbell and Klein petitions and the compliance issues
7 for the Eastsound UGA. Petitioners Klein and Campbell represented themselves, Deputy
8 Prosecutor Carter represented San Juan County, and all three Board Members attended.
9 Dorothy Austin was allowed to speak for five minutes at the beginning of the hearing.
10
11

12 **Rulings at the Hearing**

13 At the hearings, the Presiding Officer made the following rulings:

- 14
- 15 • Dorothy's Austin's late brief was allowed. However, only argument relating to the
16 Eastsound UGA compliance issues were allowed; other argument or extraneous
17 material was stricken.
 - 18 • The following exhibits submitted by John Campbell's timely motion to supplement the
19 record were allowed with these exhibit numbers:

20 *Index Number 400 – Housing Element (December, 2002)

21 *Index Number 412 – San Juan Planning Department Report, Analysis of
22 UGAs (August 9, 2000)

23 *Index Number 497 – Anita Rook, Housing Survey (October, 2003)

24 *Index Number 507 – EDAW/Usen Planning Report (December 12, 2001)

25 *Index Number 585 – Eastsound Planning Review Committee Minutes
26 (September 15, 2005)

27 *Index Number 588 – County Index Number 219 with residential density and
28 without airport overlay zones (September 1, 2005)

29 San Juan County was allowed to supplement the record with the following exhibits:

30 *Index Letter T – Declaration of Sandy Bishop (January 9, 2006)
31
32

1 * Index Number 10 - Declaration of Donovan Kehrer regarding land supply
2 analysis for the Eastsound UGA and data regarding
3 residential potential by land use designation for the
4 Eastsound UGA.
5

6
7 The Board also asked the County to submit information showing the implementation of an
8 adaptive management program for protection of groundwater on Lopez Island and
9 assumptions for sizing the Eastsound UGA by March 8, 2006. Petitioners Klein and
10 Campbell were given until March 15, 2006 to submit a response to the County's information
11 on the sizing of the Eastsound UGA.
12

13 **Post Hearing Actions**

14
15 On March 6, 2006, an Order on Dorothy Austin's Motion to Supplement the Record was
16 issued.

- 17 • In response to Board requests, the County submitted San Juan County Water
18 Resource Management Plan WRIA 2, Declaration of Mark Tompkins, and Declaration
19 of Donovan Kehrer on March 8, 2006. These submittals are given the following
20 exhibit designations:
21
22 • San Juan County Water Resource Management Plan WRIA 2 – Exhibit # V
23 • Declaration of Mark Tompkins – Exhibit # W, and
24 • Declaration of Donovan Kehrer – Exhibit # 11.
25

26 Petitioner Campbell submitted his response to the County's post hearing on March 10,
27 2006. Petitioner Klein submitted his response to these documents on March 13, 2006.
28

29
30 On May 26, 2006, Petitioner Campbell submitted a motion to supplement the record with the
31 May 16, 2006 report of election results showing that San Juan voters rejected a measure to
32

1 raise the real estate excise tax to establish a fund for affordable housing. This motion was
2 filed well after the hearing on the merits and the date for filing post hearing submissions.
3 This motion is denied.
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